

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

BANDSPEED, INC.,	)	
	)	
<i>Plaintiff,</i>	)	
	)	
v.	)	CAUSE NO. A-11-CV-771-LY
	)	
	)	
GARMIN INTERNATIONAL, INC., et al.,	)	
	)	
<i>Defendants.</i>	)	

**LG’S MOTION AND JOINDER IN TOSHIBA’S MOTION FOR SUMMARY  
JUDGMENT ON PATENT INFRINGEMENT CLAIMS (COUNTS I AND II)**

Pursuant to Fed. R. Civ. P. 56, LG<sup>1</sup> hereby moves for summary judgment that it is licensed and thus does not infringe Bandspeed’s asserted patents based on the evidence and support provided in Toshiba’s Motion for Summary Judgment (Dkt. No. 1477) (“Toshiba’s Motion”).

LG is and has been a member of the Bluetooth SIG. For the Court’s convenience, LG briefly highlights why summary judgment is appropriate, as set forth in more detail in Toshiba’s Motion:

- Section 4(b) of the Bluetooth SIG Patent/Copyright License Agreement (“BPLA,” Ex. 1 to Toshiba’s Motion) licenses “all Contributions” by a member “even if such Associate or Adopted Member has withdrawn.” Dkt. No. 1478-1, at Section 4(b).
- BPLA Section 4(b) grants a license “under the grant specified in Section 5(b).”

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<sup>1</sup> Defendants LG Electronics, Inc., LG Electronics U.S.A., Inc., and LG Electronics Mobilecomm U.S.A., Inc.

Section 5(b) grants a “royalty-free, perpetual, irrevocable” license to “claims of a patent or patent application.”<sup>2</sup> *See* BPLA Sections 1(l), 5(b). Thus, BPLA Section 4(b) encompasses a *patent* license.

- Bandspeed’s former CFO, Mr. John Curtin, testified that (i) he was the person responsible for originally reviewing the BPLA on behalf of Bandspeed and (ii) Bandspeed itself interpreted Section 4(b) as granting a patent license. *See* Dkt. No. 1479, Ex. 40, at 215:2-7. The Bluetooth SIG also interprets Section 4(b) as granting a patent license. *See* Dkt. No. 1478-41, at 115:17-117:16.
- The Bluetooth Specification identifies Bandspeed as a Contributor. Dkt. No. 1478-33, at 8 of 16 (identifying “Bandspeed, Inc.” as one of the “Contributors”).
- Bandspeed has admitted that it actively contributed its AFH technology to the Bluetooth SIG. *See, e.g.*, Dkt No. 1479, Ex. 12, at BSPD0074878; Dkt. No. 1479, Ex. 13, at BSPD0485326-327. Bandspeed further admitted that its “IP rights . . . [will] go to SIG members for free” – *i.e.*, the asserted claims would be licensed – unless Bandspeed resigns from the Bluetooth SIG “shortly before” notification that the SIG adopted Bandspeed’s AFH technology.<sup>3</sup> Dkt. 1479, Ex. 12, at BSPD0074878. Bandspeed further admitted that the Bluetooth SIG adopted Bandspeed’s AFH proposal. Dkt. No. 1479, Ex. 10. Dr. Goodman, Defendants’ technical expert, presented unrebutted testimony that Bandspeed’s contributions align with the currently asserted claims. Dkt. No. 1478-36.

In view of the foregoing and the evidence and support set forth in Toshiba’s Motion, LG

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<sup>2</sup> Such license is conferred on “each Promoter Member and Associate and Adopter Member.”

<sup>3</sup> However, as stated above, Bandspeed’s belief that it might be able to avoid conferring a royalty-free license by withdrawing is contrary to the express language of the BPLA.

is licensed to the technology contributed by Bandspeed. Therefore, LG requests the Court grant its summary judgment motion of no patent infringement.

Dated: January 10, 2014

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**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this document was served on all counsel who have consented to electronic service, Local Rule CV-5(a)(3)(A), on this the 10th day of January 2014.

/s/ Wasif Qureshi